

EXHIBIT 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inter Partes Reexamination
Control No.: 95/001,284

Requested: December 18, 2009

For: U.S. Patent No. 7,009,655

Issued: March 7, 2006

Inventor: Qiang Huang

Title: METHOD AND SYSTEM FOR
DIRECT RECORDING OF VIDEO
INFORMATION ONTO A DISK
MEDIUM

Customer No.: 83275

Confirmation No. 1850

Examiner: Ovidio Escalante

Technology Center/Art Unit: 3992

PATENT OWNER'S APPEAL BRIEF

Mail Stop *Inter Partes* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
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Sir:

I. REAL PARTY IN INTEREST

The real party in interest is MedioStream Inc., a corporation of California, having a place of business at 4962 El Camino Real, Suite 120, Los Altos, CA 94022.

II. RELATED APPEALS AND INTERFERENCES

The Appellant calls the Board's attention to the following *Inter Partes* Reexamination proceedings: Control No. 95/000617 of U.S. Patent No. 7,843,508 (the '508 patent); Control No. 95/001,534 of the '508 patent; Control No. 95/001,521 of the '508 patent; and 95/001,283 of U.S. Patent No. 7,283,172 (the '172 patent). In addition,

the '655 patent and '172 patent are the subject of litigation. The Appellant calls the Board's attention to Civil Action No. 2:07-cv-376 (CE) and Civil Action No. 2:08-cv-369 (CE), which are pending before the US District Court for the Eastern District of Texas, Marshall Division. The '508 patent is the subject of litigation in Civil Action No. 3:10-cv-05410 (RS) and Civil Action No. 3:10-cv-05762 (RS), which are pending before the US District Court for the Northern District of California, San Francisco Division. The Appellant does not know of any other appeals or interferences that will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-18 are pending, and the rejection of claims 1-18 is appealed.

IV. STATUS OF AMENDMENTS

No claim has been amended during re-examination.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention relates to a system for recording video information onto a disk medium, e.g., CD, or DVD. A system converts video information from an incoming format to an outgoing format using an integrated computer software application. The video information received in a first format is processed into a presentation format, e.g., video object for DVD (VOB), based on a desired output media format and a desired TV standard. The desired output media format is one of a plurality of standard video formats for optical disk media, e.g., Video CD (VCD), Super VCD (SVCD), and DVD. The presentation format is a specific format for video information on an optical disk media

that is based upon the desired media format and TV standard so it can be displayed from a player for the media format on a television.

VI. ISSUES TO BE REVIEWED ON APPEAL

Whether claims 1-18 are anticipated by the Cleaner 5 User Manual (“Cleaner 5”) under 35 U.S.C. § 102(b), and whether claims 5, 6, and 8 are unpatentable under 35 U.S.C. § 103(a) over Cleaner 5 User Manual in view of Cleaner MPEG Charger.

VII. ARGUMENT

A. INTRODUCTION

The claimed invention is directed to solving the problem of video conversion and authoring to record video information onto a disk medium, such as DVD, by the average consumer. The DVD player was introduced in the United States in 1997 and within five years became the standard device many consumers used to play video on their televisions. Before 2001 there were almost no consumer video software products on the consumer market capable of capturing a consumer’s video and converting it to one of several special formats recorded to optical disks for playback on televisions because these software products were far too expensive and complex. Special video processors were often required with the software and very large disk drives were needed to store partially processed video until the project was complete. A complete video system for converting film to the special format for authoring a professional DVD movie cost over \$100,000 in 1999. At that time, software programs needed to complete the tasks required to capture, convert, edit, and author video was written for highly trained professionals or semi professionals. These programs were not only very expensive, but technically complex and used to process videos for specific portions of the video market.

Early attempts at consumer level video applications for personal computers were slow, cumbersome, and often overwhelmed the computer’s processor. Software for video capture, video format conversion or disk authoring required significant hard disk storage for very large temporary files while the video was being processed because software

encoders could not process video in real time. Additionally, video capture, video format conversion and disk authoring required several programs. These and other limitations existed for conventional software for real-time video capture, format conversion, and disk authoring.

Patent Owner hired John Huang (the inventor of the '655 patent and early designer of the first professional DVD video disk authoring application for Windows-based computers) to design an application for consumers using Patent Owner's unique video processing technology. The result was an integrated computer software application that combined video format conversion and disk authoring in a unique manner that not only significantly reduced the price of such software, but also performed the video processing in real time without special video processors and large hard drives, and was so easy that any consumer could record the special video format required for a DVD or VCD disk, which could be played back on any DVD player connected to a TV. Patent Owner's software made video processing and disk authoring so simple that only a few inputs, e.g., the media format the consumer wanted to record (e.g. DVD or VCD) and the television standard where the recorded disk media would be played, were needed to create a video disk on nearly any basic personal computer system. Patent Owner's technology and software was widely recognized by the consumer news media and was even evaluated by Steve Jobs at Apple. Patent Owner's first product to contain the patented integrated computer software application was licensed by Sony Corporation of Japan, which purchased a license for every subsidiary of the company.

B. EXAMINER ERRED IN REJECTING CLAIMS 1-18 UNDER 35 U.S.C. § 102(B) AS BEING ANTICIPATED BY CLEANER 5 USER MANUAL.

Claim 1 relates to a system that provides a presentation format for recording onto a disk medium using an integrated computer software application. Among the steps performed by the integrated computer software application are: receiving a desired output media format based upon a first input; resizing the raw video information in the uncompressed format into a size associated with the desired output media format and the desired TV standard; adjusting the uncompressed format in the size associated with the desired output media format and the desired TV standard to a frame rate associated with the desired TV standard; and processing the elementary video stream with audio information in the desired output media format and the desired TV standard to form video and audio information in a presentation format based upon the desired output media format and the desired TV standard.

1. Cleaner 5 does not disclose “an integrated computer software application.”

The preamble of claim 1 requires an “integrated computer software application.” Early companies in the digital video software business specialized in specific products designed to accomplish specific tasks for different segments of the video market, such as video conversion, editing, or authoring video content. The cost of these products, including the required hardware to run them, as well as their complexity since they were designed for video professionals, made them impractical for the average consumer. Patent Owner’s founders developed a very fast and inexpensive software-only encoder, and used this encoder as part of a software development kit (SDK) that also used Microsoft Windows components to create software that could control several video

software functions using one integrated computer software application. The resulting integrated computer software application is what made consumer level video software possible at an affordable price. The integrated computer software application performs the complex tasks in the elements of the claims as a single unit or system to solve the problems associated with the prior art software programs. The Cleaner 5 manual merely discloses a professional file conversion program that is not integrated with any other software. Cleaner 5 merely mentions that some other software may be used to accomplish the portions of the task that Cleaner 5 admits it cannot perform. The problem of multiple (un-integrated) software applications is precisely one of the problems solved by the claimed invention, in addition to eliminating the complexity found in the Cleaner 5 manual, and the incompatibility of its output with other programs used to further process video into the desired presentation format.

The “integrated computer software application” claimed requires both video conversion (into video of the proper size, frame rate, and encoding based on the desired media format and TV standard) as well as disk authoring (into a presentation format based on the same desired media format and TV standard). Cleaner 5 is only a file conversion program that does not disclose integrating the software with software for optical disk authoring based on the required inputs. Cleaner 5 suffers from the deficiencies identified in the specification regarding the prior art – multiple programs , expensive hardware and software, and technical expertise are required for operation, and it does not form video in the required presentation format for playback on the desired media player using the desired TV standard. The multiple programs used to complete

these tasks along with Cleaner 5 are often incompatible and inefficient. 2:32-44. Cleaner 5 only mentions making Video CDs, in a small paragraph that states:

Making Video CDs (MPEG-1 only)

The Video CD format is a standard that plays in most DVD players. It requires MPEG-1 video and special Video CD formatting. You can easily produce MPEG-1 files for your Video CD projects in Cleaner by selecting the Video CD preset in the Advanced Settings window. To author Video CDs, you'll also need a CD-mastering application, such as Adaptec Toast or Easy-CD creator.

[Emphasis added] Cleaner 5, page 209. Cleaner 5 acknowledges it does not author a Video CD. The same is true for a DVD. Cleaner 5 fails to create the presentation format (the consumer can play from its DVD player on a TV) that is a key feature of the claimed invention. Even a cursory review of the scope and content of the prior art reveals those skilled in the art found video file conversion and DVD disk authoring to be extremely challenging tasks.¹ An important part of the claimed invention is the successful integration of various functions that had previously been performed by multiple applications such as Cleaner 5 and Adaptec Toast. This was no easy feat, as can be seen by the news reports praising such an achievement. See Exhibit 29, several

¹ See, e.g., U.S. Patent No. 7,187,852, Exhibit 4, at 1:46-48 and 1:51-57, (noting that “[I]n order to record a DVD, sophisticated DVD authoring software is required” and “[c]reating this integrated bitstream has traditionally been a cumbersome process only performed by video professionals in order to create prerecorded DVD videodiscs.”) See also, e.g., U.S. Patent No. 6,453,459, Exhibit 5, at 2:40-41 and 2:63-65 (stating, “Unfortunately, the DVD Specification is very complex, as are the conventional programs that attempt to embody it” and “...conventional authoring systems require an extensive expertise with regard to both the DVD Specification and the authoring system itself.”); and U.S. Patent No. 6,438,315, Exhibit 12 at 1:20-34 (“To author a video CD. . . Thus, it is difficult to author the video CDs.”).

sample news reports regarding MedioStream's neoDVD product and its amazing ease of use.

An integrated computer software application is software designed to operate or function as a single application, unit or system for handling multiple functions previously found in different software products, usually under the control of at least one common program. For example, Microsoft's Office suite of programs contains code for word processing (Word), code for spreadsheets (Excel), and code for e-mail (Outlook) as well as other programs, but the Office suite application operates as a unit providing a single common interface used to perform many tasks that were previously completed with multiple programs, each operating separately to perform only its designed function(s). In the integrated suite of Office applications the user can update a spreadsheet in one program (for example Excel) and that spreadsheet will be automatically updated in other documents that use the spreadsheet, such as a report created using Word or a presentation using PowerPoint. Functions like editing, spell checking, and many other common tasks are more efficiently managed across all of the programs in an integrated software application because the application operates like a single unit or system working together in a more effective and efficient manner. Cleaner 5 does not disclose a system containing an integrated software application that performs the functions recited, as required by claim 1.

Although Examiner adopted Patent Owner's construction of integrated computer software application, which was also essentially adopted by the district court to include the common meaning of the term, Examiner renders the term superfluous by giving it essentially no meaning at all when applying it to the prior art. Examiner ignored the

problems identified in the specification, and ignored the language of the claims requiring code directed to performing each and every task in the elements as part of the integrated computer software application. The scope and content of the prior art reveals that others taught away from an integrated computer software application that controls each and every function in the entire process using a few inputs because professionals wanted more control over every aspect of the video's creation, not less, for artistic and flexibility concerns in creating video. Instead, Patent Owner's claimed integrated computer software application is a program that can be used by anyone to create any one of several specific optical disk formats displayed by a consumer's optical disk player on a TV.

2. Cleaner 5 does not disclose “a code directed to receiving a desired output media format based upon a first input.”

Examiner erred in construing the term “desired output media format” unreasonably broadly. One of ordinary skill in the art reading the claims, the specification, and the file history would interpret the term “output media format” to mean a standard video format for optical disk media. Indeed, the construction adopted by the US District Court for the Eastern District of Texas, Marshall Division, in a concurrent litigation is “a standard video format for optical disk.” *MedioStream, Inc. v. Microsoft Corp.*, No. 2:08-cv-369 (CE), Memorandum Opinion and Order, at 12, Exhibit 43 (“Exhibit 43”). As stated by the Court, Patent Owner and Requester essentially agreed on most of the construction of this term in the underlying litigation:

The parties essentially agree that this term should describe the target format for the disk mastering program, but disagree as to how to describe that. Plaintiff wishes to construe this term as “standard video format for optical disk” while Defendants wish to construe this term as “standard playback format for optical disk (e.g. DVD, VCD, SVCD).” *Id.* at 11.

Examiner nevertheless argues that “the Patent Owner reads limitations from the specification into the claims.” However in the *inter partes* litigation, both Requester and Patent Owner agreed that “media format” refers to “optical disks” and it was Requester that sought to limit the term to “(e.g. DVD, VCD, SVCD).” Examiner argues that “media format” is NOT limited to optical disks but any media, which is *per se* unreasonable when the term “media format” is used throughout the specification to refer only to “DVD, VCD, SVCD” among other optical disk formats, both parties stipulated to this fact, and it was adopted by a district court judge in other *inter partes* proceedings regarding the construction of this exact same term. *Id.* The title and the specification of the ‘655 patent confirm the invention’s goal of writing video to optical disk media: “. . . [T]he invention allows a user to take any video information in any format and convert such video information into an outgoing format for writing onto a disk media, e.g., CD, DVD.” 4:15-18; 8:49-60; 9:28-39; Tables 1 and 2 [Emphasis added].

The specification acknowledges and describes many ways of distributing video in any output format. However, the claims are narrowly drawn to preparing video for output to “disk media (*e.g.*, DVD, CD-ROM).” 1:26-30; 2:19-21; 2:52-56; 4:15-18; 4:60-64. The use of the term “media format” is consistent with the problem solved by the invention, i.e., the easy conversion of any video to a commonly used format for writing to CD or DVD, which can be displayed by a consumer’s DVD player on any television. 2:1-44 and 4:9-25. More specifically, the claims require output based on selection of a “media format” – a term used consistently throughout the specification to reference and describe only well known video standards for recording on disk media. (*See* 2:19-21, 2:25-26; 4:15-18; 8:49-60; 9:28-39; Tables 1 and 2.)

The specification lists examples of the media format as “DVD, VCD, and Super VCD, among others.” See, 8:49-50. A review of the scope and content of the prior art cited by Patent Owner reveals one skilled in the art would understand there have been numerous optical disk formats beyond those specifically cited in the specification, e.g., DVD-VR, HD-DVD and Blu-Ray.

Cleaner 5 also does not disclose “a code directed to receiving a **desired** output media format based upon a first input.” The term “desired” requires a possibility of receiving one of a plurality of output media formats, i.e., there are multiple possible output media formats. Again, Patent Owner and Requester agreed to the construction of “desired” in the *inter partes* proceedings in court, where the court stated:

Defendants fear that doing so [not using the term selecting] would allow the claim to read on devices where the user has no choice of output media format. This argument is not supported by the remainder of the construction, which is agreed to read “one from among multiple available output media formats.” Because the inputting/receiving or selecting must be of one from among multiple available media formats, the term “selecting” does not impose any limitation beyond inputting/receiving. Both require multiple available media formats, so Defendants’ stated reason for the construction no longer applies. (Exhibit 43, page 13.).

The construction of desired to mean only one is unreasonable *per se*. The specification clearly describes that there are a plurality of possible output media formats. See 1:26-30; 2:51-56; 4:60-64. This description of “the invention” in the specification defines the scope of the claims, especially when the claim language itself requires a “desired” format. See *Honeywell Int’l, Inc. v. ITT Indus., Inc.*, 452 F.3d 1312 (Fed. Cir. 2006); *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1367 (Fed. Cir. 2007) (“characterizations directed to the invention as a whole” limit the scope of the claims).

Cleaner 5 does not support receiving multiple output media formats. Examiner incorrectly argues that Cleaner 5 supports multiple output media formats since it can create MPEG-1 and MPEG-2 files that could potentially be used in another software application to create a VCD or a DVD. Cleaner 5, however, only allows a user to input one “VCD setting” to create an encoded MPEG-1 file, not to select the creation of a desired optical disk format. See Cleaner 5, page 209. Assuming arguendo that the “VCD setting” is considered to be an input for an output media format, Cleaner 5 receives no other output media format at all. Nowhere does Cleaner 5 disclose receiving a DVD or SVCD media format.

Although Cleaner 5 discloses certain MPEG-2 encoding settings, and indicates MPEG-2 encoded video can be used by other software to create a DVD (see Cleaner 5, pages 62, 203-210), these are provided merely as explanatory statements. Cleaner 5 does not have code directed to receiving a DVD media format input. In fact, Cleaner 5’s disclosures that “Cleaner now encodes MPEG-2, which is the format used for DVD-video” and “DVD-video’s data rate is 5.7Mbits/sec” are incorrect. [Emphasis added]. One skilled in the art would know that video encoded for the DVD-video output media format can also be compressed according to the MPEG-1 standard, and the video bit rate can be up to 9.8Mbit/sec and audio for the DVD-video output media format can be encoded according to PCM, Dolby, MPEG-1 or MPEG-2. (See DVD Demystified, page 251, Exhibit 21).

Contrary to the Examiner’s assertions, MPEG-2 files are not intrinsically associated with a DVD media formats. An MPEG-2 encoded video can be used for either a DVD or SVCD media format as shown in Table 1 of the ‘655 patent. Additionally,

MPEG-1 encoded video can be used to create either a DVD or VCD media format according to the DVD and VCD specifications. Both Examiner's attempt to stretch the meaning of "media format" to exclude "optical disks," and Examiner's attempt to associate MPEG-2 with only DVD are equally unreasonable, especially when the specification clearly shows that both a DVD and SVCD can be created with an MPEG-2 encoded video. Additionally, a DVD can be created with a MPEG-1 encoded video, making the alleged association clearly unreasonable. Consideration of the specification, claims, and the scope and content of the prior art would preclude Examiner's proposed constructions of media format, and show Cleaner 5 does not meet the "code directed to receiving a desired output media format based upon a first input" claim element.

3. Cleaner 5 does not disclose "a code directed to resizing the raw video information in the uncompressed format into a size associated with the desired output media format and the desired TV standard."

The claimed invention requires code that resizes the video automatically to a size associated with both the desired output media format and desired TV standard received as inputs. The claims do not read on a user selecting the video size based on his/her knowledge of the media formats and TV standards. The code is required to associate the desired media format and TV standard with a size for the video, thus eliminating the need for the user to have any special knowledge of video processing.

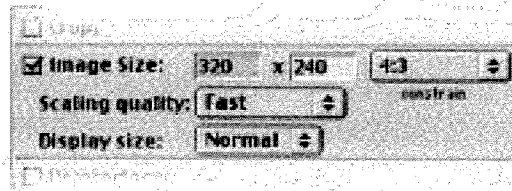
Cleaner 5 neither discloses code for associating video sizes with media formats (e.g. VCD, SVCD, or DVD) or TV standards (e.g. NTSC or PAL), nor for resizing raw video to any size based on such an association. Contrary to Examiner's assertion, page 205 of Cleaner 5 merely describes the video sizes one can select for encoding MPEG-1

and MPEG-2 video, but does not disclose Cleaner 5 code for resizing raw video information according to a size associated with a desired output media format and desired TV standard received as input. Consistent with prior art professional systems, Cleaner 5 merely allows the user to select any video size.

The **Image Size** panel gives you several options to control; the final display dimensions of your file....For more information on the other Image size options, see the **Image size** section in **Appendix B: Advanced Settings Tabs** on page 228. [Emphasis in original]. Cleaner 5, page 206.

Advanced Settings Tabs on page 228 discloses:

You can control the final size of your video or image with this feature. If you are producing a QuickTime movie, you can choose the video display size, which can be larger than the size of the actual video...



Like the prior art disclosed in the '655 patent, Cleaner 5 requires a user to have special knowledge of the parameters for creating video output in order to successfully create a video file or stream for use in another program used to author a desired media format.

Cleaner 5 does not disclose "code directed to resizing the raw video information in the uncompressed format into a size associated with the desired output media format and the desired TV standard."

4. **Cleaner 5 does not disclose “a code directed to adjusting the uncompressed format in the size associated with the desired output media format and the desired TV standard to a frame rate associated with the desired TV standard.”**

Among many parameters, Cleaner 5 allows the user to choose any frame rate, but does not have code that adjusts uncompressed video to a frame rate associated with a desired TV standard received as input. Examiner argues that page 207 of Cleaner 5 discloses the features recited. The Examiner cited the section below:

Frame Rate

Use the pop-up menu to choose a frame rate between 23-60 frames per second. Standard NTSC video is 29.97 fps; standard PAL video is 25 fps.

Contrary to Examiner’s assertion, instead of code automatically adjusting the frame rate of raw video to a rate associated with a TV Standard input, the user of Cleaner 5 must select a frame rate from many possible rates between 23 and 60 frames per second. The Cleaner 5 manual provides the user some information about the frame rates used by NTSC and PAL, but nowhere does it disclose that Cleaner 5 has code for adjusting the frame rate based on receiving NTSC or PAL as an input. If Cleaner 5 had code for adjusting the video based on the TV standard input, there would be no need to instruct the user on selecting a frame rate. Cleaner 5 does not disclose “code directed to adjusting the uncompressed format in the size associated with the desired output media format and the desired TV standard to a frame rate associated with the desired TV standard.”

5. **Cleaner 5 does not disclose “a code directed to processing the elementary video stream with audio information in the desired output media format and the desired TV standard to form video and audio information in a presentation format based upon the desired output media format and the desired TV standard.”**

The recited feature requires further processing the video and audio that has already been processed based on the desired output media format and desired TV standard, to form video and audio in a presentation format that is further based on the same desired output media format and desired TV standard. The term “presentation format” is a term of art in the DVD optical disk art, and Patent Owner used the term as it is ordinarily used in that field. The inventor created the first Windows-based DVD authoring software and knew that the term “presentation format” has a special meaning in the art. Patent Owner cited to numerous references in the art, including patents and published applications by Requester identifying the common definition of “presentation format” by those skilled in the art, such as described in U.S. Pat. No. 5,608,909 at 2:2-3 and 16-18, Exhibit 17. See also U.S. Pat. No. 5,581,760 at 1:47-48, Exhibit 15. The prior art confirms “presentation format” is sometimes referred to as presentation data by those skilled in the art, and presentation data in the DVD art is called “video object for DVD” or “VOB.” Consistent with this commonly known meaning in the art, dependent claim 8 states “...the presentation format is selected from a group consisting of: VOB (Video Objectfor DVD)...” A review of the scope and content of the prior art confirms that one skilled in the art would know a presentation format for DVD is embodied in the video object for DVD (VOB):

Details of the DVD Specification including but not limited to multiplexed data stream and DVD player configurations, data formats, protocols and

loading of data are known to those skilled in the art and will therefore be discussed only to the extent required for an understanding of the invention. [Emphasis added] U.S. Pat. No. 6,453,459 at 23:4-9, Exhibit 5.

The Video portion of the DVD Specification defines a data set ("DVD-Video data set") with which pre-recorded DVD-Video discs must conform in order to assure proper reading, decoding and playback when inserted into a media reader/decoder ("DVD-player"). More specifically, the Video portion specifies how "control data" and audio/video "presentation data" are encoded and ordered within the data set. The control data determines how presentation of audio/video data will proceed when the disc is played back on a DVD-player and consists of low-level state information, data structures and instruction sets which govern what kinds of functions and user operations a DVD player can perform. [Emphasis added] *Id.* at 1:25-38.

Multiplexer 185 responds to authoring engine 160 by receiving DVD parameter information from compiler 170, retrieving presentation data from presentation data storage 203 and combining the retrieved information and data in accordance DVD Specification 205. Multiplexer 185 then stores the combined information and data ("DVD data stream" or ".vob file") in output DVD data storage 290. Layout formatter 187 retrieves the .vob files and ifo files from output DVD data storage 290 and combines these files into a single "disc image" file, which it then stores in disc image file storage 207. The disc image file can then be sent through network I/O 145 (FIG. 1) to additional apparatus for further review, processing and/or for burning one or more DVD-ROMs 207. [Emphasis added] *Id.* at 6:62-7:8.

Presentation data is the data that is actually seen or heard: the video, audio, graphics and text. The basic unit of presentation data in DVD is a Video Object (VOB), stored in a VOB file. [Emphasis added] U.S. Pat. No. 7,302,453 at 1:46-48, Exhibit 8.

Once the elemental streams exist in the appropriate file formats for use in DVD, they can then be multiplexed together into the Video Object (.VOB) files that are used by a DVD playback device. [Emphasis added] *Id.* at 3:5-8.

The presentation data structure is a logical hierarchy overlaid on the physical data structure (see figure 6.22 and table 6.10). The presentation

data structure determines the grouping of video sequences and the playback order of each block of video in a sequence (see figure 6.17 and 6.18). [Emphasis added] A DVD Demystified, 2nd Edition, Jim Taylor, McGraw Hill 1998, at page268.

The DVD-video presentation format allows automatic freeze frames at the end of any video segment (a PCG, a cell, or a VOBU). [Emphasis added] *Id.* at 285. See also *id.* at 250-295

Multiplexed video and audio data as a content of a DVD is called video object (VOB). A VOB is made up of a meaningful series of multiplexed video and audio data and defined as multiplexed data that makes a great sense in allowing access for a continuous replay such as a title of movie, the audio menu or the chapter menu. U.S. Pat. No. 6,424,793 at 1:55-60, Exhibit 6; U.S. Pat. No. 6,469,718 at 6:51-56, Exhibit 7.

Once the elemental streams exist in the appropriate file formats for use in DVD, they can then be multiplexed together into the Video Object (.VOB) files that are used by a DVD playback device. [Emphasis added] U.S. Pat. 7,302,453 at 3:5-15, Exhibit 8.

As seen in the references above, the DVD presentation format is consistently referred to as “VOB.” The acronym “VOB” is used to name the presentation format structure and the corresponding file that is stored on disk. As noted above, this usage of “VOB” is consistent with its usage in dependent claim 8. The “VOB” file is also described as the file that is written to disk, as recited in claim 7, and the “VOB” is what is played back by a DVD player. The prior art cited above also confirms the “VOB” is formed in a process that comprises multiplexing, as recited in dependent claim 9.

Although the VCD and SVCD specifications were written before the term “presentation format” and “presentation data” were used to describe the VOB written to disk in the DVD standard, it was well known in the art that corresponding audio/video information and structures are described in the VCD and SVCD standards for writing video and audio information to disk media.

The structure of a Video CD is the definition of the information placed on the Video CD, and how each piece of information is linked to the other pieces. This structure is coded into the Video CD information area, and later retrieved by the playback device, i.e. the DVD player. [Emphasis added] U.S. Pat. No. 7,103,261 at 3:17-21, Exhibit 13.

The MPEG videos on a Video CD must meet certain requirements, which are outlined in the White Book. To create MPEG videos for Video CD there is a range of hard and software solutions available. When making MPEGs it is important to encode to White Book specifications. MPEG video can either be stored as a separate track on the Video CD (MPEG track) or as a play item inside the Video CD data track (MPEG file). MPEG tracks must be encoded to MPEG-1 standard at CBR (Constant Bit Rate) 1150 kbit/s video and 224 kbit's audio, and must be multiplexed according to White Book standard. [Emphasis added] *Id.* at 3:41-51.

Traditionally the MPEG stream is converted to DAT files and placed within the MPEGAV folder within the white book file system. [Emphasis added] *Id.* at 3:60-62.

The data structure of a track on which, for example, video data and audio data which form unit data of one tune are recorded in music or the like is structured as shown in FIG. 4A. It is assumed that retrieval is made by the track number as in the CD-DA, and a head of one track is provided with a pause margin of 150 sectors. Further, 15 sectors subsequent to the pause margin is a *front* margin and file final 15 sectors of the track is a rear margin, both forming empty data areas. The MPEG data area is formed between the front margin and the rear margin, In the MPEG data area, a sector V forming video data and a sector A forming audio data are time multiplexed through interleaving and recorded at the ratio of 6:1 on average, as shown in FIG. 4B. [Emphasis added] U.S. Pat. No. 5,740,304 at 6:52-67, Exhibit 10.

In the case of the video CD, the track #1 is not used for recording actual video data or audio data as the first track, but used as a control data track. The actual video data or audio data is recorded on the track #2 to the track #n. In other words, the track #2 to the track #n are constituted formed by the video sector and audio sector described with reference to FIGS. 5A to 5C, as shown in FIGS. 4A to 4B. [Emphasis added] *Id.* at 8:28-35. See also, *id.* at 4:50-10:49 and corresponding figures for more detail.

FIG. 6 shows a track constitution of the optical disc (video CD) of the present embodiment. That is, the MPEG video data and audio data are recorded in an interleaved fashion on the optical disc. The video and audio data are recorded at a ratio of 6:1 on an average. On the assumption that track number retrieval may be made as in a conventional CD player, 150 sectors are set for a pause margin, while 15 sectors each are set for a front margin and a rear margin, respectively, in order to diminish the effect on a bitstream on retrieval. The sector format for the MPEG video data is comprised of a pack made up of a pack header and pack data, as shown in FIG. 7A. Each pack is made up of 23244 bytes representing a 1-sector user data area of the CD-ROM. In FIG. 7, PTS, DTS, SCR and STD denote a presentation time stamp, a decoding time stamp, a system reference clock and a system target decoder, respectively. The sector format of the MPEG audio data, as shown in FIG. 7B, is basically the same as that of the video data. However, 12 bytes, 13 bytes and 2279 bytes are allocated to the pack header, packet header and to the data portion, with the 2304 bytes as one pack, to which excess 20 bytes (20 zeros) are appended so that the resulting 2324 bytes make up one pack in the case of video data. [Emphasis added] U.S. Pat. No. 5,687,160 at 7:30-54, Exhibit 11. See also, *id.* at 4:29-14:45 and corresponding figures for more detail.

In the MPEGAV directory, files of MPEG audio data and MPEG video data are stored. The file names of MPEG audio data and MPEG video data should be AVSEQ#n.DAT and MUSIC#n.DAT, respectively. #n is a value that is smaller by 1 than a track number of a track at which data is recorded. Tr is followed by a track number. Note that AVSEQ#n.DAT and MUSIC#n.DAT cannot be used at the same time. [Emphasis added] U.S. Pat. No. 6,438,315 at 6:8-14, Exhibit 12.

In the SEGMENT directory, file names of PIMs that are placed in the SPIM portion shown in FIG. 2 are stored. The file names of PIMs should be ITEM#n.DAT (where #n is a segment number of a segment at which a PIM, the beginning of the PIM, is placed. A PIM is followed by a segment number. Thus, a file name of a PIM depends on the size and stored sequence (allocation sequence). [Emphasis added] *Id.* at 6:21-27.

When a video CD is played back, MPEG audio data, MPEG video data, and CD-DA data that have been recorded on the track Tr2 or later shown in FIG. 2 are sequentially played back. In addition, pictures and audio are played back corresponding to the PBC recorded in the PSD portion in an

interactive menu manner. [Emphasis added] *Id.*, at 6:62-67. See also, *Id.* at 1:20-8:44 and corresponding figures for more detail.

As described above, the VCD presentation format does not have a unified name. The presentation format for VCD may be referred to as MPEG data area, track, sector format or .DAT file. In the claimed invention, the VCD presentation formation is referred to as “VCD MPEG-1” in order to refer to the above structure. See dependent claim 8. This structure can also be named after its file name extension “.DAT”. This “VCD MPEG-1” presentation format or .DAT file is what is written to disc. Dependent claim 7 is directed to writing this presentation format, VCD MPEG-1, to disc. The “VCD MPEG-1” presentation format is what is then played back. The “VCD MPEG-1” can also be formed in a process that comprises multiplexing, as recited in claim 9.

Accordingly, the term “presentation format” refers to the VOB format for DVD and its equivalent for other output media formats, i.e., a specific format for video and audio information on an optical disk media that is recognized by a player for the media format. The presentation format cannot be any format, but must be the final format read from the disk for playback such as the video object for DVD (VOB). This construction is consistent with the language of the claims and usage in the specification, as well as numerous prior art references that describe the scope and content of the prior art that shows how the term would be understood by one of ordinary skilled in the art.

The video specifications/standards for authoring an output media format (VCD, SVCD or DVD) require exact adherence to the parameters required by the specification/standard. To comply with the specification/standard requires selection of a TV standard that will be used to display the recorded audio and video information so that the presentation format specific to that combination of media format and TV standard

will be written to disk and ultimately played on a TV using the selected standard. By requiring the formation of a “presentation format based upon the desired output media format and desired TV standard,” the claimed invention allows one to create the specific format for writing video and audio information to an optical disk recognized by a player for the desired media format using the desired TV standard.

Contrary to Examiner’s assertion, merely multiplexing the elementary video stream with the audio stream does not result in a presentation format. Multiplexing is only one part of the process performed to obtain the presentation format. See Exhibits 4 and 5. The presentation format that is ultimately recorded on an optical disk is not the MPEG-1 or MPEG-2 file or stream created by Cleaner 5. The MPEG-1 or MPEG-2 files created by file conversion applications such as Cleaner 5 must be further processed by disk authoring applications to add additional information required by the DVD, VCD or SVCD standards before creating the final format written to disk media and ultimately played back on a TV – the presentation format. Cleaner 5 admits that it does not perform disk authoring and points to other software, i.e., Adaptec Toast or Easy-CD Creator, for that functionality. See page 209. MPEG-1 or MPEG-2 files simply written to a CD or DVD disk will NOT play on a standard optical disk playback device connected to a television, even if they are VCD, SVCD or DVD compliant MPEG files. Anyone can try this on their standard DVD player at home.

The presentation format must be based on the desired output media format – the selection of DVD creates a .vob file and corresponding structures, the selection of VCD creates a .dat file and the corresponding structures. A MPEG-1 file can be used for both VCD and DVD. Therefore its creation alone does not make it “based on” receiving VCD

as the desired media format. This is why the inventor used the term VCD MPEG-1 to describe the presentation format written to disk and the corresponding structure for a VCD. A VOB is the only presentation format for a DVD, and may contain either MPEG-1 or MPEG-2 encoded video. Cleaner 5 cannot form a VOB, and the manual admits that further processing is required to create the presentation format for a VCD.

The presentation format must also be based on the desired TV standard – the selection of NTSC creates a .vob of multiplex audio and video synchronized specifically for playback on a player for NTSC televisions, and selection of PAL creates a .vob of multiplex audio and video synchronized specifically for playback on a player for PAL televisions. Additionally, selection of NTSC includes anti-copying codes that must be present on NTSC players, but is not required for PAL DVD players. Playing a DVD recorded for PAL on a DVD player for NTSC televisions will result in the video either not playing, or the audio and video playing out of synchronization. The same is true for the creation of a VCD. This is why the presentation format must also be based upon both the output media format and the TV standard – so the software can prepare the correct combination of either a .vob or .dat file, multiplexed to correctly synchronize the audio, video, and other presentation information for the corresponding TV.

Examiner uses Requester's unreasonable construction of "output media format" to argue "when an MPEG 1 system is selected, the elementary video stream is processed or multiplexed with the audio stream to form a single multiplexed stream of audio and video information in the desired NTSC or PAL TV standard based on the desired MPEG 1 output media format." However, the claim language requires processing the video into a "presentation format" based on both the "TV standard" and "output media format." If the

“single multiplexed stream of audio and video information” described in Cleaner 5 as an MPEG 1 stream is the presentation format, then the “output media format” (MPEG-1) and “presentation format” are construed to be the same thing. Logically, Requester’s construction fails because MPEG-1 cannot be both the presentation format and the output media format where the claim requires processing the video into the presentation format based on the output media format and the TV standard, which are received as the first and second inputs.

Examiner’s construction of presentation format is unreasonably broad because it defines a MPEG-2 stream as the presentation format for a DVD, but nowhere in the specification, claims, or extensive citations to the prior art does anyone ever simply call MPEG-2 encoded video as the presentation format for DVD. It is always identified as the VOB, which can contain either MPEG-1 or MPEG-2 video and is always created for a specific television standard. The MPEG-1 encoded video for a VCD is stored in a .dat file in a similar manner, always multiplexed and structured for playback on a device for a specific TV standard. Cleaner 5 does not disclose the “code directed to processing the elementary video stream with audio information in the desired output media format and the desired TV standard to form video and audio information in a presentation format based upon the desired output media format and the desired TV standard.”

6. Cleaner 5 does not disclose the “desired output media format is selected from a group consisting of: DVD, VCD, and SVCD” as required by claim 5.

Examiner contends that Cleaner 5 discloses that a user may output media in VCD Format. Cleaner 5, page 209. Cleaner 5 states that a user can select the “Video CD preset in the Advanced Settings window” in Cleaner to “easily produce MPEG-1 files for

Video CD project.” Cleaner 5, page 209. However, the section of the manual referenced by Examiner does not cover output in a media format (such as DVD, VCD, or SVCD), but instead covers output in files or streams such as described in the MPEG encoding specification. The same page of Cleaner 5 referenced by Examiner clearly states, “To author Video CDs, you’ll also need a CD-mastering application, such as Adaptec Toast or Easy-CD creator.” Cleaner 5, page 209.

Nowhere does Cleaner 5 disclose code that it will process video based on receiving an input of a media format chosen from DVD, VCD or SVCD.

7. Cleaner 5 does not disclose the “code directed to inputting a quality setting based upon a third input when the desired output media format is DVD” as required by claim 6.

Examiner argues that Cleaner 5 discloses that a user may select an input specifying quality settings based on a variety of parameters, citing Cleaner 5 at page 59. However, the only examples provided by Examiner include a user selected data rate and frame rate. Cleaner 5, pages 59, 62, 64-65. The data rate discussed in Cleaner 5 is not a quality setting, and there is no selection of a DVD media format in Cleaner 5. Since Cleaner 5 cannot accept an input specifying DVD as the media format, the user cannot select any quality setting “when the desired output media format is DVD.” Examiner’s construction of quality setting is also unreasonable because it includes frame rate adjustment, which is specifically required elsewhere in the claims.

8. Cleaner 5 does not disclose the “writing the video and audio information in the presentation format onto a disc media,” limitation of claim 7.

Examiner argues Cleaner 5 discloses writing the video and audio information in the presentation format onto a disk media such as CD-ROM or DVD-ROM citing Cleaner 5 at page 144. However, the supported formats identified by Examiner are formats for writing data to a CD disk and DVD disk, not video according to an output media format (DVD, VCD or SVCD specification). Importantly, the Cleaner 5 manual does not disclose support for writing the data formats listed by Examiner. All the formats Cleaner 5 supports for writing video and audio are listed on page 141, and the list does not include DVD, VCD or SVCD. Further, the Cleaner 5 manual admits an additional application is required to prepare and write video to a VCD (or DVD). See Cleaner 5, page 209. Cleaner 5 alone cannot write video in a presentation format onto disk media, instead the Cleaner 5 manual admits additional processing by another application is required. *Id.*

9. Cleaner 5 does not disclose the “presentation format is selected from a group consisting of: VOB(Video Object for DVD), VCD MPEG1, and SuperVCD MPEG2” limitation of claim 8.

Examiner argues Cleaner 5 discloses writing the video and audio information in the presentation format onto a disk media, for example an MPEG 1 system stream for VCD, citing Cleaner 5 at page 206. Since Cleaner 5 is not capable of creating a presentation format as discussed above, Cleaner 5 does not disclose code directed to selection of the “presentation format” from those identified in this claim element.

10. Cleaner 5 does not disclose the “audio information is tuned to a desired frequency based upon the desired output media format” limitation of claim 10.

Examiner argues Cleaner 5 discloses that audio information is adjusted to a desired frequency based upon the desired output media format because a user may use MP3 audio files and “the MP3 default sample rate is 44.1 kHz, which is also the sample rate of audio CDs.” Cleaner 5, page 212. The desired output media is defined as a specific standard video format for optical disk media in in the claims. MP3 is not a desired output media format as described and claimed in the ‘655 patent. The portions of the Cleaner 5 manual cited by Examiner do not describe the MPEG files cited in other elements by Examiner as the output media format. Because Cleaner 5 does not have code for receiving an “output media format” it also does not have code for tuning to a desired frequency based on the desired output media format.

11. Cleaner 5 does not disclose the “desired frequency is selected from a group consisting of: 48 kHz for DVD, 44.1 kHz for VCD and SVCD” limitation of claim 11.

Examiner argues Cleaner 5 discloses various desired frequencies including 44.1 kHz for use with VCD. Cleaner 5, pages 212-213, 209. However, the pages cited by Examiner relate to MP3 audio, not VCD audio as quoted. MP3 is not an output media format. Cleaner 5 does not select a frequency based on receiving an input of VCD or any other output media format.

C. **EXAMINER ERRED IN REJECTING CLAIMS 5, 6, AND 8 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER CLEANER 5 USER MANUAL IN VIEW OF MPEG CHARGER**

1. **The “desired output media format is selected from a group consisting of: DVD, VCD, and Super VCD” limitation of claim 5 is not met.**

Examiner argues “MPEG Charger discloses DVD output media formats. MPEG Charger at p. 9.” MPEG Charger does not disclose code for receiving a DVD as a “desired output media format.” Nowhere does MPEG charger disclose a DVD input or other means for code to receive a desired output media format. MPEG Charger does not disclose code for receiving one of a plurality output media formats. The only preset cited by Examiner is for VCD, and MPEG Cleaner does not provide what Cleaner 5 is missing, as discussed above.

2. **The “code directed to inputting a quality setting based upon a third input when the desired output media format is DVD” limitation of claim 6 is not met.**

As discussed above, MPEG Charger does not provide the missing code for receiving a desired output media format. Therefore, there cannot be code for inputting a quality setting based on the missing code for receiving a DVD desired output media format.

3. **The “presentation format is selected from a group consisting of: VOB(Video Object for DVD), VCD MPEG1, and SuperVCD MPEG2” limitation of claim 8 is not met.**

MPEG Charger does not disclose the presentation format for DVD, VCD or SVCD missing from Cleaner 5, as discussed above. Cleaner 5, even with MPEG Charger, still cannot process video and audio information to form video and audio

information in a presentation format, as discussed above. MPEG Charger does not disclose preparing a .vob file, .dat file or .mpg file as specified by the DVD, VCD and SVCD standards, respectively.

D. EXAMINER ERRED IN CONSTRUING THE CLAIMS OF THE '655 PATENT AS A MATTER OF LAW.

1. Examiner Erred By Failing To Apply Statutory Patent Law And Common Law To *Inter Partes* Proceedings.

The sole purpose of the patent clause of the Constitution is to secure for the United States advances in science and technology by encouraging inventors to disclose their discoveries to the public.² For over two hundred years Congress and the Supreme Court have exercised their constitutional powers to promote the advancement of science and useful arts in the United States by providing strong protections to those who accept the bargain provided by the patent statute.³ Upon examination of an inventor's application the Patent Office may grant a patent, thereby providing the patentee valuable rights to exclude others from use of the claimed inventions for a limited period of time in exchange for its disclosure to the public.⁴ While evaluating the application it is maintained in secrecy.⁵ If the Patent Office determines the invention is not worthy of a patent, the applicant is free to maintain the secrecy of the invention forever.⁶ However,

² Constitution of the United States, Article 1, Section 8, clause 8, states: "Congress shall have power ... to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

³ The first United States Patent Act of 1790 was titled "An act to promote the Progress of Useful Arts" ..

⁴ See e.g. *United States v. American Bell Tel. Co.*, 167 U.S. 224, 239 (1897)

⁵ 35 U.S.C. §122; 2(b)(2)(C).

⁶ For example, the formula for Coca Cola could have been disclosed in exchange for a patent, and everyone would be free to use the patented formula today. Instead, the

once a patent is issued and published the inventor has lost the secrecy of his invention forever.⁷ To protect the bargain made in the name of the United States and encourage inventors to disclose their discoveries, Congress and the Supreme Court established strong protections for issued patents, including evidentiary presumptions and tenants of claim construction that strongly favor the validity of patents. The protections afforded patents were once so strong that even the Patent Office lacked control or jurisdiction over issued patents, neither could they be revoked nor cancelled by the President, or any other officer of the government.⁸ The only authority deemed competent to set a patent aside, annul or correct it for any reason whatever was the courts of the United States.⁹

Congress provided the Patent Office the general power to grant and issue patents, and the specific power to establish regulations consistent with the law in conducting its proceedings.¹⁰ Congress provided some quasi judicial powers to the Patent Office, and the Supreme Court has recognized some of its proceedings as quasi judicial.¹¹ Consistent with the general power to grant and issue patents, the courts presume all patents issued by

inventor and his successors have maintained the formula as a secret and it has never been disclosed to the public.

⁷ 35 U.S.C. §§151 and 153 .

⁸ See e.g. *McCormick v. Aultman*, 169 U. S. 606; 42 L. Ed. 875; 18 S. Ct. 443. *U. S. v. Schurtz*, 102 U. S. 378; *U. S. v. Bell Tel. Co.*, 128 U. S. 315; *Seymour v. Osborn*, 11 Wall. 516; *Cammeyer v. Newton*, 94 U. S. 225; *U. S. v. Palmer*, 128 U. S. 262; *James v. Campbell*, 104 U. S. 356.

⁹ See e.g. *McCormick v. Aultman*, 169 U. S. 606; 42 L. Ed. 875; 18 S. Ct. 443. *Moon v. Robbing*, 96 U. S. 530; *U. S. v. Bell Tel. Co.*, 128 U. S. 315; *Lumber Co. v. Rust*, 168 U. S. 589.

¹⁰ 35 U.S.C. §2 (a)(1) and (b)(2).

¹¹ 35 U.S.C. §§ 2, 23, 24, 141-145. See also *American Bell*, 167 U. S. at 267, 42 L. Ed. 144 (The commissioner of patents, in issuing or withholding patents, in reissues, interferences and extensions, exercises quasi judicial functions.); *Butterworth v. Hoe*, 112 U. S. 50, 28 L. Ed. 656.

the Patent Office are correctly issued, and the patent statute contains an express presumption of their validity.¹² However, once granted the Supreme Court treats patent rights to an invention the same as patent grants to land, since both are valuable property rights that shall not be taken without statutory and common law protections provided by the Constitution and laws of the United States.¹³ In the past all determinations regarding revocation of patent rights, including assertions by the government, were required to be brought in a court of equity.¹⁴ Although the Patent Office has general powers to grant patents, and specific powers to make regulations and conduct proceedings, the right to revoke a patent requires some due process as recognized in the current patent statute.¹⁵ All *ex parte* examination proceedings are quasi judicial in nature so Congress provided the right to file a district court action upon final determination by the Patent office in all *ex parte* proceedings, however this right is not provided in *inter parte* reexamination proceedings, demonstrating Congress' intent that these proceedings be truly judicial in nature.¹⁶

The absence of a right to file a district court case upon final determination of the Patent Office in *inter partes* reexamination proceedings is particularly important since these proceedings appear to be no different than *inter parte* district court proceedings between the patent owner and an alleged infringer.¹⁷ The *inter partes* reexamination

¹² See e.g. *Klein v. Russell*, 86 U. S. 433; 22 L. Ed. 116; 35 U.S.C. §282.

¹³ *American Bell*, 167 U.S. at 262-163.

¹⁴ *American Bell*, 167 U.S. at 264.

¹⁵ 35 U.S.C. §§2 (b)(2), 251, 302-307, 311-318.

¹⁶ 35 U.S.C. §§134, 141-145, 306, 315. The *inter partes* reexamination statute is unique in its omission of appeal under §145 to a district court, allowing only a direct appeal to the Board of Patent Appeals and Interferences and the Federal Circuit Court of Appeals.

¹⁷ 35 U.S.C. §315.

statute provides a statutory right to seek a stay of any co-pending district court action involving the validity of the same claims, further evidencing the intent of Congress that *inter partes* reexamination proceedings be conducted in the same manner as district court *inter parte* judicial proceedings regarding the validity of a patent.¹⁸ The estoppel provisions of the *inter partes* reexamination statute further expresses Congress' intent that *inter partes* reexamination proceedings are intended to be judicial in nature and may replace duplicative judicial proceedings in district court regarding the validity of patents.¹⁹

However, nowhere in the patent statute has Congress expressed an intent to change the substantive law regarding *inter partes* judicial proceedings between a patentee and an alleged infringer regarding the validity of a patent. The only change made by the *inter partes* reexamination provisions of the patent statute have been to allow the Patent Office to “establish regulations, not inconsistent with law, which shall govern the conduct of [such] proceedings in the Office....”²⁰ The Patent Office is given sole discretion to determine whether to accept jurisdiction over an *inter partes* validity dispute between a patent owner and an alleged infringer (third party requester), which may not be appealed at all.²¹ Once the Patent Office accepts jurisdiction, it must conduct *inter partes* proceedings consistent with the law.²² Congress provided the Patent Office all the tools

¹⁸ 35 U.S.C. §318.

¹⁹ 35 U.S.C. §§315(c) and 317.

²⁰ 35 U.S.C. §§2, 311-318.

²¹ 35 U.S.C. §312.

²² 35 U.S.C. §2(b)(2).

required to conduct *inter partes* validity proceedings in the same manner as district courts.²³

The Supreme Court long ago rejected the argument that the infringement section of the patent statute is somehow limited to third parties in infringement actions when it held the government has the right to protect the interest of the public in seeking to revoke a patent.²⁴ Later in the same case the Supreme Court answered the direct question “...under what circumstances and upon what conditions the United States are entitled to have a patent, issued in due course of law, set aside and cancelled.”²⁵ It Answered - the United States government must be held to the same standard as anyone else making such a claim:

We take the general doctrine to be that, when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumption that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of

²³ 35 U.S.C. §§ 2, 23, 24.

²⁴ *United States v. American Bell Telephone Co.*, 128 U.S. 315, 373 (1888) .

²⁵ *American Bell*, 167 U.S. at 238.

evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful. [Emphasis added].

United States v. American Bell Tel. Co., 167 U.S. 224, 241 (1897). In the *American Bell* case the government sought to set aside a patent based on fraud, and the Supreme Court held the government must prove fraud under the same legal standard and evidentiary presumptions as any other party in litigation. *Id.* Regarding the government's right to take or annul a patent, the *American Bell* case is directly on point and has never been overturned.

When the Patent Office exercises jurisdiction over *inter partes* reexamination proceedings, third party requester in making invalidity claims must prove invalidity using the same legal standard applied to invalidate patent in any district court.²⁶ The Requester in the present *inter partes* proceedings is the alleged infringer in parallel *inter partes* district court litigation. The patent statute requires that Requester establish proof of invalidity under a presumption of the patent's validity.²⁷ Both the statutory presumption of validity and the common law presumption of the issuance of a patent in the normal course apply. All *other* laws relating to *inter partes* judicial proceedings regarding a patent's validity also apply. *American Bell*, 167 U.S. at 238.

In the past the Patent Office has argued that prosecution of patent applications, reissue applications and *ex parte* reexamination proceedings are not subject to the laws applied in district court litigation.²⁸ However, in *ex parte* application proceedings there

²⁶ 35 U.S.C. §2(b)(2), 23, 24; *American Bell*, 167 U.S. 224, 238 (1897).

²⁷ 35 U.S.C. §282.

²⁸ See *ex parte Miyazaki*, 89 U.S.P.Q.2d (BNA) 1207, 1211 (B.P.A.I. 2008); *In re Morris*, 127 F.3d 1048, 1054, 44 U.S.P.Q.2d (BNA) 1023, 1027 (Fed. Cir.1997); *In re Swanson*,

are no patent rights at issue, and in reissue proceedings the patentee has voluntarily surrendered the patent to pursue further *ex parte* prosecution proceedings.²⁹ After *ex parte* reexamination proceedings the patentee may pursue *inter partes* proceedings in the district court upon a final adverse ruling by the Patent Office.³⁰ Only the *inter partes* reexamination statute contains no provision for review by a district court evidencing the intent of Congress that such proceedings be conducted in the same manner as *inter partes* judicial proceedings. Further, the estoppel provisions presume the issues will be fully litigated, precluding further litigation of the same issues in other proceedings after the *inter partes* reexamination proceedings become final.³¹ Congress could not possibly have intended that an infringer in *inter partes* court proceedings could avoid the patent's statutory presumption of validity by simply making the validity arguments in an *inter partes* reexamination proceeding before the Patent Office instead.³² If Congress wanted to eliminate an infringer's burden of proving invalidity, it could have done so directly by removing the requirement from the statute. The Supreme Court's holding in *American Bell* also requires that anyone seeking to revoke a patent in *inter partes* proceedings has the same burden of proof.³³

Unlike *ex parte* patent applications and reissue proceedings, there are significant financial incentives to avoid amending the claims during *inter partes* proceedings with an

540F.3d 1368, 1377-78, 88 U.S.P.Q.2d (BNA) 1196, 1203 (Fed. Cir. 2008); *In re Reuter*, 670 F.2d 1015, 1019, 210 U.S.P.Q. (BNA) 249, 253 (C.C.P.A. 1981).

²⁹ 35 U.S.C. §251.

³⁰ 35 U.S.C. §306, 145.

³¹ 35 U.S.C. §§315(c) and 317.

³² 35 U.S.C. §2(b)(2).

³³ *American Bell*, 167 U.S. at 238.

infringer - any significant amendment may wipe out all past damages, providing the infringer a royalty free infringement period from the time the patent first issued until any amended or new claims issue.³⁴ Past damages can amount to hundreds of millions of dollars, and are the only way for the patentee to recover for the infringer's past infringement. Amendment of original claims in an asserted patent essentially renders the claims worthless and the litigation pointless.

Alleged infringers have significant incentive to file *inter partes* reexamination proceedings where the Examiner ignores the rules of evidence, the presumed statutory validity of the patent, and the common law presumption that the patent was correctly issued. Instead of these presumptions in patentees favor, infringers propose unreasonably broad claim constructions to Examiner to force amendments to the claims in hopes of eliminating all past damages, even where Patent Owner can prove years of willful infringement after licensing the technology. This can't possibly be the intent of Congress, and the Supreme Court surely could not allow such a usurping of judicial process to destroy the very purpose of the patent system. The patent statute and the the Supreme Court's holding in *American Bell* require the Patent Office to apply existing law in *inter partes* reexamination proceedings to anyone attacking the validity of a United States patent.³⁵ Examiner's failure to do so is clear legal error. The legal errors committed in the present case resulted in Examiner finding every reexamined claim invalid based on little or no evidence, contrary to over two hundred years of well established patent law with heavy burdens to overcome a patents presumed validity.

³⁴ 35 U.S.C. §252.

³⁵ 35 U.S.C. §2(b)(2); *American Bell*, 167 U.S. at 238.

Despite the intent of Congress and opinions of the Supreme Court, a United States patent today has a rating lower than junk bond status - even lower than mortgage backed securities. Patents are now routinely revoked during *inter partes* reexamination proceedings in the Patent Office when the owner enforces them against alleged infringers. The alleged infringer files an *inter partes* reexamination request recommending unreasonably broad constructions, and Examiners routinely revoke the claims without even considering well established claim construction laws that favor the patentee and the validity of the patent. Who would enter into any agreement with a party that regularly reneges on its obligations in this manner? Patent Owner's '508 patent issued in November 2010, and it took the Patent Office only a few months to issue an order stamped "*inter partes* reexamination GRANTED." The proverbial equivalent of a check stamped "RETURNED INSUFFICIENT FUNDS."

The founders acknowledged the importance of technology innovation by including the patent clause in the Constitution. The might of our military and our business prosperity have been the direct result of our ability to out innovate everyone, whether through medical breakthroughs, advanced food production techniques, or advanced weapons that have brought about victory on the battlefield; we have enjoyed the fruits of our technology. Those who have toiled in garages or the nation's research labs investing their time and resources to produce innovations have come to expect the United States to honor its commitments to uphold the validity of its own patents after the inventor has already made the bargained for disclosure to the public. Once disclosed, any trade secret protections are lost forever and everyone is otherwise free to copy what is publicly available in the published patent.

The right to enforce the patent is all the patentee has to prevent others many times more powerful, from simply stealing the technology and flooding the market with copies gained without the expense of the investment made by the patentee. For over two hundred years Congress and the Supreme Court have jealously protected the value of this bargain through the creation and enforcement of strong patent laws that favor validity. Examiner has ignored the patent law in this inter partes reexamination proceeding, and unless the appellate courts act to remedy the errors, future inventors may place their trust in secrecy instead of a patent.

2. The Examiner Erred By Failing To Apply The Presumption That All Patents Are Correctly Issued.

It is well settled law that after a patent issues, it is presumed the Patent Office acted properly in granting the patent. *Philadelphia And Trenton Railroad Company v. Stimpson*, 39 U.S. 448, 459; 10 L. Ed. 535 (1840) (“Patents for lands, equally with patents for inventions, have been deemed prima facie evidence that they were regularly granted, whenever they have been produced under the great seal of the government; without any recitals or proofs that the prerequisites of the acts under which they have been issued have been duly observed.”); *Klein v. Russell*, 86 U. S. 433, 466; 22 L. Ed. 116 (1873) (It is to be presumed, until the contrary is made to appear, that the commissioner did his duty correctly in granting a reissued patent.); *Mitchell v. Tilghman*, 86 U. S. 287, 390, 22 L. Ed. 125 (1873) (“Application for a patent is required to be made to the commissioner appointed under authority of law, and inasmuch as that officer is empowered to decide upon the merits of the application, his decision in granting the patent is presumed to be correct.”).

The Examiner erred by accepting Requester’s invalidity arguments even though Requester failed to provide any evidence that certain claim element were met by Cleaner 5 relying instead on attorney arguments. In order to rebut the presumption that Patent Owner’s ‘655 patent was properly issued, Requester must present competent evidence that each and every claim element is met by the alleged prior art reference. Requester

makes assumptions regarding the capabilities of the alleged prior art Cleaner 5 software based on a manual that does not show each and every claim element. The presumption that a patent is correctly issued cannot be overcome by mere legal argument on the part of Requester. Examiner's adoption of those arguments is legal error without some evidence to overcome the presumption the '655 patent was correctly issued.

3. The Examiner Erred By Failing To Apply The Statutory Presumption Of Validity.

The patent statute enacted by Congress requires an infringer to prove the invalidity of any patent against a presumption of its validity. 35 U.S.C. §282. The presumption requires the infringer to prove invalidity by clear and convincing evidence. The Examiner erred by failing to require Requester to establish invalidity by clear and convincing evidence. As stated above, Requester makes numerous allegations regarding the capabilities of the alleged prior art Cleaner 5 software based on a manual that does not show each and every claim element. Examiner's failure to apply the statutory presumption of validity to infringer/Requester's invalidity arguments was legal error where requester lacked clear and convincing evidence to overcome the presumption the '655 patent is valid.

4. The Examiner Erred By Failing To Apply The Correct Legal Standard To Construe The Claims.

Claim construction is an issue of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). The law of claim construction for issued patents has a history going back well over a hundred years. The Federal Circuit comprehensively summarized the tenants of claim construction in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir.

2005)³⁶. In *Phillips*, the Federal Circuit set forth a methodology for claim interpretation that gives primacy to the language of the claims themselves, the specification, and the file history. As discussed above, The Supreme Court has uniformly applied the law of patents to all courts and tribunals equally without exception, including the US Patent Office. Disregarding the Supreme Court's law regarding the construction of issued patents during *inter partes* reexamination proceedings is legal error as set forth the below.

The patent statute authorizes the Patent Office to implement regulations consistent with law in conducting proceedings. Nowhere does the law exempt *inter partes* reexamination proceedings from the claim construction law applied to *inter partes* court proceedings. The PTO simply "borrowed" the standard used for prosecution and interferences after the *inter partes* reexamination statute was enacted. However, as discussed above, there are significant differences in patent application proceedings and *inter partes* reexamination proceedings. The Supreme Court's precedent regarding claims construction applies to in *inter partes* judicial proceedings.

³⁶ The Federal Circuit was established in part to correct the utter chaos into which patent law had fallen with respect to the finality of a prior adjudication of the status of a patent. See e.g. *Consolidated v. Diamond*, 157 Fed. 677, and related cases involving the Grant patent held valid in the Southern District of New York, the Southern District of Ohio, the Northern District of Georgia, and by the Circuit Court of Appeals of France. The Circuit Court of Appeals for the Sixth Circuit held the patent void for want of invention. Thereafter the Circuit Court of Appeals for the Second Circuit held the patent valid. At the time there was no right of appeal to resolve these split decisions concerning the same patent. The failure of comity between the circuit courts of appeals was so repugnant to the spirit of the patent clause of Constitution that Congress had to step in to create the Federal Circuit to resolve such differences and insure a uniform body of patent laws.

5. The Examiner Erred By Construing The Claims Liberally In Favor Of Requester, Not In Favor Of Patentee As Required.

It is well settled law that patents are entitled to a liberal construction in favor of the patentee. *Stimpson v. Woodman*, 77 U.S. 117, 123, 19 L. Ed. 866 (1869) (Patents are not to be treated as mere monopolies, and therefore as odious in the law, but are to receive a liberal construction, and under a fair application of the rule that they be construed *ut res magis valeat quam pereat.*); *Rubber Co. v. Goodyear*, 76 U. S. 788, 795, 19 L. Ed. 566 (1869) ("A patent should be construed in a liberal spirit, to sustain the just claims of the inventor. This principle is not to be carried so far as to exclude what is in it, or to interpolate anything which it does not contain. But liberality, rather than strictness, should prevail where the fate of the patent is involved, and the question to be decided is whether the inventor shall hold or lose the fruits of his genius and his labors."); *Corning v. Burden*, 56 U.S. 252, 268, 14 L. Ed. 683 (1853) (Where the patentee, after describing his machine, sets forth his claim in rather ambiguous and equivocal terms, which might be construed to mean either a process or machine, the construction should be that which is most favorable to the patentee, "*ut res magis valeat quam pereat.*"). *See also Hogg v. Emerson*, 52 U.S. 587, 12 L. Ed. 505 (1850); *Turrill v. Michigan Southern, etc., R. Co.* 68 U.S. 491, 17 L. Ed. 668 (1863); *Klein v. Russell*, 86 U. S. 433, 22 L. Ed. 116 (1873); *Keystone Mfg. Co. v. Adams*, 151 U. S. 139, 38 L. Ed. 103 (1894); *Merrill v. Yeomans*, 94 U. S. 568, 573, 24 L. Ed. 235 (1876); *Grant v. Raymond*, 31 U.S. 218, 8 L. Ed. 376 (1832); *Wilson v. Rousseau*, 44 U.S. 646, 11 L. Ed. 1141 (1846).

Examiner failed to use well established Supreme Court law in construing the claims in favor of patentee. The liberal construction of claims is to be made, if at all, in favor of the patentee. Liberal constructions adopted to defeat the validity of a patent are

contrary to well established law.

6. The Examiner Erred By Failing To Construe The Claims Narrowly In Favor Of Validity.

It is well established law that inventions directed to improvements in a crowded field are construed narrowly to uphold their validity. *McCormick v. Talcott*, 61 U. S. 402 (1857). That a claim covering an improvement is not entitled to a broad construction is too obvious to require the citation of authorities. *Cimiotti v. Fur*, 198 U. S. 399 (1905); *Kokomo v. Kitselman*, 189 U. S. 8 (1903). The specification of the '655 patent admits the invention is directed to an improvement of known elements. A liberal construction is not to be adopted where it would be repugnant to the manifest sense and reason of the instrument. *Brown v. Guild*, 90 U.S. 181; 23 L. Ed. 161 (1874). If the patentee specifies any element as part of the claimed combination, either directly by the language of the claim or by such a reference to the descriptive part of the specification as carries such elements into the claim, he makes such element material to the combination, and the court cannot declare it to be immaterial. *Fay v. Cordesman*, 109 U. S. 408 (1883).

The Examiner erred by failing to acknowledge limitations in the claims that Requester agreed to in the parallel litigation in the district court. The only reason Requester asserted otherwise in the reexamination proceedings was to invalidate the patent. Failure to adopt the narrow constructions proposed by Patent owner, and agreed to by Requester in the litigation was error.

7. The Examiner Erred By Construing The Claims To Defeat Validity.

The Supreme Court requires that where a patent may be construed in one of two ways, that construction will be adopted which will sustain the patent. *Coupe v. Royer*,

155 U. S. 565, 577, 39 L. Ed. 263; McClain v. Ortmyer, 141 U. S. 419, 35 L. Ed. 800; Loom Co. v. Higgins, 105 U. S. 580, 598, 26 L. Ed. 1177; Corning v. Burden, 15 How. 252, 14 L. Ed. 683; Rubber Co. v. Goodyear, 9 Wall. 788, 795, 19 L. Ed. 566; Turrill v. Michigan Southern, etc., R. Co., 1 Wall. 491, 510, 17 L. Ed. 668; Merrill v. Yeomans, 94 U. S. 568, 573, 24 L. Ed. 235; Klein v. Russell, 19 Wall. 433, 22 L. Ed. 116 (In construing a patent courts should proceed in a liberal spirit, so as to sustain the patent and the construction claimed by the patentee if it can be done consistently with the language which he has employed; and this applies to a reissue as much as to an original patent.). Coupe v. Royer, 155 U. S. 565, 577, 39 L. Ed. 263 (In case of doubt between two constructions of a claim, the invention is to be preserved and the one which renders the claim a practical nullity is to be disregarded.); See also Corning v. Burden, 15 How. 252, 14 L. Ed. 683.

Requester proposed constructions that were neither reasonable nor consistent with Requester's proposed constructions in the district court litigation. At a minimum the examiner could choose between Patent Owner's proposed constructions, the district court's claim construction order, or the constructions proposed by the Requester in the district court. Instead, the Examiner chose constructions that would render the claims invalid, despite clear legal authority that where a choice of reasonable constructions is available, that construction that preserves the validity of the patent must prevail.

8. The Examiner Erred By Failing To Construe The Claims In View Of The State Of The Prior Art.

It is well settled law that a patent is to be construed with reference to the state of the art at the time it was granted, and a claim thus construed will not be held to include

anything disclosed by prior patents or devices previously in public use or known to the public. *Garneau v. Dozier*, 102 U. S. 230, 234, 26 L. Ed. 133 (To determine accurately the extent of the invention secured by a patent, the state of the art at the time when the original patent was granted must be considered.). *See also Thompson v. Boisselier*, 114 U. S. 1, 29 L. Ed. 76; *Lawther v. Hamilton*, 124 U. S. 1, 9, 31 L. Ed. 325; *Computing Scale Co. v. Automatic Scale Co.*, 204 U. S. 609, 51 L. Ed. 645; *Garneau v. Dozier*, 102 U. S. 230, 234, 26 L. Ed. 133; *Pope Mfg. Co. v. Gormully, etc., Mfg. Co., No.2*, 144 U. S. 238, 241, 36 L. Ed. 420; *Royer v. Coupe*, 146 U. S. 524, 36 L. Ed. 1073; *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 260, 39 L. Ed. 973; *Gordon v. Warder*, 150 U. S. 47, 37 L. Ed. 992; *Miller v. Foree*, 116 U. S. 22, 29 L. Ed. 552; *McCarty v. Lehigh Valley R. Co.*, 160 U. S. 110, 40 L. Ed. 358; *Gordon v. Warder*, 150 U. S. 47, 37 L. Ed. 992; *Cimiotti Unhairing Co. v. American Fur Ref. Co.*, 198 U. S. 399, 49 L. Ed. 1100; *Leggett v. Avery*, 101 U. S. 256, 25 L. Ed. 865; *Shepard v. Carrigan*, 116 U. S. 593, 29 L. Ed. 723; *Knapp v. Morss*, 150 U. S. 221, 227, 37 L. Ed. 1059; *Hubbell v. United States*, 179 U. S. 77, 80, 45 L. Ed. 95.

Although Patent owner submitted numerous prior art references in connection with its claim construction arguments regarding how one of ordinary skill in the art would understand the claimed invention, Examiner adopted Requester's constructions without regard to the prior art cited by patent owner. A construction that ignores the state of the prior art is legal error.

VIII. CLAIMS APPENDIX

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE APPENDIX

A copy of the evidence involved in the present appeal is attached hereto as Appendix B.

X. CERTIFICATE OF SERVICE

The certificate of service is set forth on the page following Appendix C.

XI. STATEMENT PURSUANT TO 37 C.F.R. §1.943(C)

This Brief contains less than 14,000 words, to wit, 13,852 words, through the end of the signature block below

Dated: April 28, 2011

Respectfully submitted,

/Steve Y. Cho/

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CLAIMS APPENDIX

1. A system for converting video information from an incoming format to an outgoing format using an integrated computer software application, the integrated computer software application being provided on one or more memories, the one or more memories including:

a code directed to receiving video information in a first format;

a code directed to receiving a desired output media format based upon a first input;

a code directed to receiving a desired TV standard based upon a second input;

a code directed to converting the video information in the first format to raw video information an uncompressed format using a decoding process;

a code directed to resizing the raw video information in the uncompressed format into a size associated with the desired output media format and the desired TV standard;

a code directed to adjusting the uncompressed format in the size associated with the desired output media format and the desired TV standard to a frame rate associated with the desired TV standard;

a code directed to processing the uncompressed format in the size and the frame rate into an elementary video stream; and a code directed to processing the elementary video stream with audio information in the desired output media format and the desired TV standard to form video and audio information in a presentation format based upon the desired output media format and the desired TV standard.

2. The system of claim 1 wherein the first format is selected from a group consisting of: a digital file, a digital captured video stream, an analog captured video stream, and an internet video stream.

3. The system of claim 2 wherein the digital file is selected from a group consisting of: an AVI format an MPEG format, a DV format, a QuickTime format, Real Video format, Windows Media Player format.
4. The system of claim 1 wherein the uncompressed format is selected from a group consisting of: RGB, and YUV.
5. The system of claim 1 wherein the desired output media format is selected from a group consisting of: DVD, VCD, and Super VCD.
6. The system of claim 5 further comprising a code directed to inputting a quality setting based upon a third input when the desired output media format is DVD.
7. The system of claim 1 further comprising writing the video and audio information in the presentation format onto a disk media.
8. The system of claim 1 wherein the presentation format is selected from a group consisting of: VOB(Video Object for DVD), VCD MPEG1, and SuperVCD MPEG2.
9. The system of claim 1 wherein the code directed to processing of the elementary video stream with audio information comprises a code directed to perform a multiplexing process.
10. The system of claim 1 wherein the audio information is tuned to a desired frequency based upon the desired output media format.
11. The system of claim 10 wherein the desired frequency is selected from a group consisting of: 48 kHz for DVD, 44.1 kHz for VCD and SVCD.
12. The system of claim 1 wherein the codes directed to converting, resizing, and adjusting, and processing are codes directed to be performed free from one or more intermediary files.

13. The system of claim 1 further comprising a code directed to processing the raw video information based upon video editing information based upon user input.

14. The system of claim 1 further comprising a code directed to processing the audio information based upon audio editing information based upon user input.

15. The system of claim 1 wherein the code directed to processing into the elementary video stream is provided in code directed to an encoding process and the code directed to converting into the raw video information is provided in code directed to a decoding process.

16. The system of claim 1 further comprising a code directed to receiving video editing information based upon a third input.

17. The system of claim 16 further comprising a code directed to receiving audio editing information based upon a fourth input.

18. The system of claim 16 wherein the integrated computer software application is a single integrated application.

EVIDENCE APPENDIX

Exhibit 1	U.S. Pat. 7,009,655, filed 07/23/02, Assignee MedioStream, Inc. (not attached, also submitted in IDS under reference P92)
Exhibit 2	U.S. Pat. 7,283,172, filed 07/23/02, Assignee MedioStream, Inc. (not attached, also submitted in IDS under reference P106)
Exhibit 3	File History for U.S. Pat. 7,009,655 (not attached)
Exhibit 4	U.S. Pat. 7,187,852, filed 10/24/2001, Assignee Apple Computer, Inc. (not attached)
Exhibit 5	U.S. Pat. 6,453,459, filed 01/21/98, Assignee Apple Computer, Inc. (not attached)
Exhibit 6	U.S. Pat. 6,424,793, filed 11/28/97, Assignee Sony Corp. (not attached)
Exhibit 7	U.S. Pat. 6,469,718, filed 08/22/97, Assignee Sony Corp. (not attached)
Exhibit 8	U.S. Pat. 7,302,453, filed 04/04/02, Assignee Sonic Solutions (not attached, also submitted in IDS under reference P107)
Exhibit 9	U.S. Pat. 7,343,052, filed 04/09/02, Assignee Sonic Solutions (not attached)
Exhibit 10	U.S. Pat. 5,740,304, filed 07/04/94, Assignee Sony Corp. (not attached)
Exhibit 11	U.S. Pat. 5,687,160, filed 12/10/93, Assignee Sony Corp. (not attached)
Exhibit 12	U.S. Pat. 6,438,315, filed 08/19/94, Assignee Sony Corp. (not attached)
Exhibit 13	U.S. Pat. 7,103,261, filed 01/04/01 (not attached)
Exhibit 14	Patent Application Publication US 2003/0026598, filed 07/31/01 (not attached)
Exhibit 15	U.S. Pat. 5,581,760, filed 07/06/92, Assignee Microsoft Corp. (not attached)
Exhibit 16	U.S. Pat. 6,369,835, filed 05/18/99, Assignee Microsoft Corp. (not attached)
Exhibit 17	U.S. Pat. 5,608,909, filed 04/15/94, Assignee Microsoft Corp. (not attached)
Exhibit 18	U.S. Pat. 7,149,969, filed 10/18/00, Assignee Nokia Corp. (not attached)
Exhibit 19	U.S. Pat. 6,101,546, filed 03/11/96, Assignee Microsoft Corp. (not attached)

Exhibit 20	U.S. Pat. 6,766,407, filed 03/27/01, Assignee Microsoft Corp. (not attached)
Exhibit 21	Jim Taylor, DVD Demystified, McGraw-Hill, 2d edition, pp. 268-269.
Exhibit 29	MedioStream In The News, neoDVD Oct. – Dec. 2001 (submitted in 95/001,284 under artifact number 95/001,284VA)
Exhibit 30	U.S. Pat. 6,944,226, filed 10/03/00, Assignee Matsushita Electric Corporation of America (not attached)
Exhibit 31	KIM ET AL., Conversion Between DV and MPEG-2 Intra Coding, Department of Electrical and Electronic Eng.The Graduate School of Yonsei University., South Korea IEEE 0-7803-6622-0101 2001 pp 34-35
Exhibit 32	LIANG ET AL., A New Content-Based Hybrid Video Transcoding Method, School of Electrical and Elec. Engineering, Nanyang Technological University, Singapore, 2001, pp 429-432 (submitted in IDS under reference N134)
Exhibit 33	KEESMAN, ET AL., Transcoding of MPEG bitstreams, Signal Processing: Image Communication 8, 1996, pp 481-500 (submitted in IDS under reference N135)
Exhibit 34	SUN, ET AL., Architectures for MPEG Compressed Bitstream Scaling, IEEE Transactions on Circuits and Systems for Video Technology, Vol. 6, No. 2, April 1996, pp 191-199 (submitted in IDS under reference N136)
Exhibit 35	LIU ET AL., Local Bandwidth Constrained Fast Inverse Motion Compensation for DCT-Domain Video Transcoding, The University of Texas at Austin, Austin TX, 2001, pp. 1609-1612 (submitted in IDS under reference N137)
Exhibit 36	CHAU, ET AL., Motion Vector Re-Estimation for Fractional-Scale Video Transcoding, Nanyang Technological University, Singapore, 2001, pp 212-215 (submitted in IDS under reference N138)
Exhibit 37	CHANG ET AL., Manipulation and Compositing of MC-DCT compressed Video, IEEE Journal on Selected Areas in Communications, Vol. 13, No. 1, Jan. 1995, pp 1-11 (submitted in IDS under reference N139)
Exhibit 40	U.S. Pat. 7,200,836, filed 08/05/2002, Assignee Apple Computer, Inc. (not attached, also submitted in IDS under reference P110)
Exhibit 41	U.S. Pat. 6,985,420, filed 01/22/01, Assignee Sony Corp. (not attached)
Exhibit 42	U.S. Pat. 5,894,328, filed 12/19/96, Assignee Sony Corp. (not attached)
Exhibit 43	<i>MedioStream, Inc. v. Microsoft Corp.</i> , No. 2:08-cv-369 (CE), Memorandum Opinion and Order

RELATED PROCEEDINGS APPENDIX

No copies of decisions rendered by a court or the Board in any other of the related appeals or interferences listed on pages 1 and 2 of this Brief are included as there have been no decisions by the court or Board in the related appeals or interferences.

CERTIFICATE OF SERVICE

I hereby certify that on **April 28, 2011**, I caused a copy of the foregoing **Patent Owner's Appeal Brief** under 37 CFR § 1.903, to be served as follows under 37 CFR § 1.248:

By First Class Mail:

Donald J. Quigg (Reg. No 16,030)
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